

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

IN RE:

EASTERN LIVESTOCK CO., LLC

DEBTOR

CASE NO. 10-93904
CHAPTER 11

**RESERVATION OF RIGHTS AND OBJECTION TO INTERIM ALLOWANCE AND
INTERIM PAYMENT OF THE FOURTH INTERIM FEE APPLICATION OF FAEGRE
BAKER DANIELS, LLP [ECF 2173] FOR COMPENSATION AND REIMBURSEMENT
OF EXPENSES AS COUNSEL FOR JAMES A. KNAUER, CHAPTER 11 TRUSTEE**

Come Alton Darnell, East Tennessee Livestock Center, Inc., Moseley Cattle Auction, LLC, Piedmont Livestock Company, Inc., and Southeast Livestock Exchange, LLC (collectively, the “Parties”), by counsel, and hereby object on an interim basis and reserve for the final fee application all objections to the allowance and payment of fees and expenses of Faegre Baker Daniels LLP (“FBD”). In support of this Reservation of Rights and Objection, the Parties respectfully state as follows:

BACKGROUND

1. On December 27, 2010, after consideration of the Notice of Appointment and Application for Order Approving Appointment of Trustee [ECF No. 98] and the accompanying Trustee’s Verified Statement and Notice of Acceptance [ECF No. 98-1] and sworn Affidavit of Disinterest [ECF No. 98-2], the Court entered the Order Approving the Appointment of James A. Knauer as Chapter 11 Trustee [ECF No. 102] in the above-captioned bankruptcy case.

2. On December 30, 2010, James A. Knauer, Chapter 11 Trustee for the Estate of Eastern Livestock Co., LLC (the “Trustee”), filed his Application to Employ Baker & Daniels LLP [n/k/a FBD] as Counsel [ECF No. 113] (the “FBD Employment Application”), supported

by the sworn FBD Affidavit [ECF No. 114] and sworn Amended Affidavit [ECF No. 235]. The Court entered an Order granting the FBD Employment Application [ECF No. 248] on February 1, 2011, after withdrawal of an objection filed by First Bank.

3. On June 1, 2011, FBD filed its First Interim Application of Baker & Daniels LLP for Compensation and Reimbursement of Expenses as Counsel for James A. Knauer, Chapter 11 Trustee [ECF No. 520] (the “First Interim Application”). This Application covered the time period from December 27, 2010 through April 30, 2011, the first approximate 120 days of the case. The fees requested were approximately \$635,000. No interim objections were filed. The First Interim Application was approved on an interim basis by an Order of this Court entered on June 29, 2011 [ECF No. 577]. It was promptly paid by the Trustee from funds he held and controlled in the Estate.

4. On November 11, 2011, FBD filed its Second Interim Application of Baker & Daniels LLP for Compensation and Reimbursement of Expenses as Counsel for James A. Knauer, Chapter 11 Trustee [ECF No. 820] (the “Second Interim Application”). This Application covered the time period from May 1, 2011 through August 31, 2011, the second approximate 120 day period of the case. The fees requested were approximately \$600,000. Multiple objections were filed and overruled, all on an interim basis and without discussion, at a hearing on December 19, 2011. The Second Interim Application was approved on interim basis by an Order of this Court entered on December 19, 2011 [ECF No. 917]. It was promptly paid by the Trustee from funds he held and controlled in the Estate.

5. Baker and Daniels merged with Faegre on or about January 1, 2012. A Notice of name change was filed on January 9, 2012 [ECF No. 958] but no sworn supplemental disclosures were filed arising in connection with the merger of the two firms.

6. Over one full year after its Second Interim Application, on November 26, 2012, FBD filed its Amended Third Interim Application of Faegre Baker Daniels LLP for Compensation and Reimbursement of Expenses as Counsel for James A. Knauer, Chapter 11 Trustee [ECF No. 1562] (the “Third Interim Application”). This Application covered the time period from September 1, 2011 through September 30, 2012. The fees requested were approximately \$2.6 million. No explanation was given regarding the extraordinary length of time between the filing of the interim Applications. Multiple interim objections were overruled on an interim basis. The Third Interim Application was approved on interim basis by an Order of this Court entered on December 20, 2012 [ECF No. 1666]. It was promptly paid by the Trustee from funds he held and controlled in the Estate, which payment was made on a post-confirmation basis under the terms of the confirmed Plan, said Plan being confirmed at the same hearing, with all objections being overruled other than one change to the Plan being ordered in regard to the scope of releases given to the Trustee and his professionals.

7. On May 17, 2013, FBD filed its Fourth Interim Application of Faegre Baker Daniels LLP for Compensation and Reimbursement of Expenses as Counsel for James A. Knauer, Chapter 11 Trustee [ECF No. 2173] (the “Fourth Interim Application”), which is at issue herein. This Application covers the time period from October 1, 2012 through February 28, 2013, and requests fees in the approximate amount of \$1.27 million.

8. The total of the four Interim Fee Applications of FBD, for fees only and not including actual expenses incurred, is slightly in excess of \$5.1 million.

RESERVATION OF RIGHTS AND OBJECTION

9. For all the reasons previously stated, the Parties continue in their objections to both the interim allowance and interim payment of fees and expenses for FBD, on an interim

basis. The nondisclosures by both FBD and the Trustee are not only serious, but also are and were pervasive to the merits and conduct of this chapter 11 proceeding and its continuing fall-out.

10. To the extent that the Court enters an order approving the Fourth Interim Application, the order will not be a final approval of the fees or expenses. *See Matter of Taxman Clothing Co.*, 49, F.3d 310, 312 (7th Cir. 1995) (“The law is clear . . . that all interim awards of attorney’s fees in bankruptcy cases are tentative.”) (citations omitted); *In re Eckert*, 414 B.R. 404, 409 (Bankr. N.D. Ill. 2009) (“Interim fee awards under 11 U.S.C. § 331 are discretionary and are subject to reexamination and adjustment during the course of the case The Court may review the case at its conclusion and take into account the results obtained in making a final allowance.”) (citations omitted); *In re Gibson*, 2010 WL 774573, *10 (Bankr. C.D. Ill. 2010) (interim orders allowing fee applications are subject to further review and modification by court) (citations omitted).

11. Against this background, a lengthy objection to the Fourth Interim Application is not required at this interim stage. The Parties reserve any and all rights to object to the final fee application filed by FBD in this bankruptcy case.

12. At this stage in the proceedings, prior to this Court permitting any interim payment on this Application, the Trustee should provide a more detailed accounting of the status of the Plan, the two “funds” set up by the Plan, and how and from which funds any payment on this Application is intended to be made. Disgorgement is an ongoing possibility, and no further interim payments may be warranted at this juncture.

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CERTIFICATE OF SERVICE

I hereby certify that on June 10, 2013, a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

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